

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No.: EB-09-TP-0163
American Taxi Shuttle and Limo, Inc.)	
)	NAL/Acct. No.: 201032700002
Daytona Beach, Florida)	
)	FRN: 0019167477
)	
)	

FORFEITURE ORDER

Adopted: June 10, 2011

Released: June 10, 2011

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of twenty thousand dollars (\$20,000) to American Taxi Shuttle and Limo, Inc. (“American Taxi”) for willful and repeated violation of section 301 of the Communications Act of 1934, as amended (“Act”).¹ The noted violations involved American Taxi’s operation of an unlicensed radio transmitter on the frequency 152.3900 MHz in Daytona Beach, Florida.

II. BACKGROUND

2. On September 24, 2010, the Enforcement Bureau’s Tampa Office (“Tampa Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”)² to American Taxi for its operation of radio transmitters on 152.3900 MHz without the requisite Commission authorization. As discussed in detail in the *NAL*, agents from the Tampa Office determined that American Taxi, despite verbal and written warnings issued by the agents, continued its unlicensed operation from its business location in Daytona Beach, Florida. In view of the record evidence, including the fact that American Taxi operated radio transmitters without a license after notice that such activity violated the Act and the Commission’s rules (“Rules”), the *NAL* proposed a forfeiture of \$20,000 against American Taxi for violation of section 301 of the Act. American Taxi submitted a response to the *NAL* requesting cancellation of the proposed forfeiture arguing that: (1) it was operating pursuant to a license, and (2) it was never warned that its actions violated the Act.³

III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with section 503(b) of the Act,⁴ section 1.80 of the Rules,⁵ and the *Forfeiture Policy Statement*.⁶ In examining

¹ 47 U.S.C. § 301.

² *American Taxi Shuttle and Limo, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13387 (Enf. Bur. 2010).

³ See Letter from Donald Jackson, Owner, American Taxi Shuttle and Limo, Inc., to Ralph Barlow, District Director, Tampa Office, Enforcement Bureau (dated October 5, 2010) (“*NAL Response*”).

⁴ 47 U.S.C. § 503(b).

American Taxi's response, section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷ As discussed below, we have considered American Taxi's response in light of these statutory factors and impose a \$20,000 forfeiture.

4. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act.⁸ On September 27 and 28, 2009 and November 22, 2009, agents from the Tampa Office observed unlicensed radio transmitters operating on the frequency 152.3900 MHz from American Taxi's business in Daytona Beach, Florida. In its *NAL Response*, American Taxi does not deny that it operated radio transmitters on the dates in question.⁹ It alleges, however, that it was operating legally with the consent of The Plaza Resort & Spa, the licensee authorized to operate on the frequency of 152.3900 MHz in Daytona Beach, Florida.¹⁰

5. As discussed below and based on the evidence before us, we are unpersuaded by American Taxi's arguments that it was operating its radios on 152.3900 MHz with the consent of the licensee. American Taxi asserts that The Plaza Resort & Spa purchased radios from a vendor for use by taxis about ten years ago.¹¹ It further claims that the vendor later sold radios directly to taxi companies, including American Taxi, and programmed those radios on The Plaza Resort & Spa's frequencies.¹² American Taxi asserts that the vendor would not have programmed 152.3900 MHz into the transmitters without authorization from the licensee.¹³ However, American Taxi was unable to provide corroboration of its assertions regarding the radio vendor, or to provide a copy of a written agreement or a contact with The Plaza Resort and Spa who could confirm an agreement or any other evidence of the agreement's existence. According to the licensee, The Plaza Resort & Spa, there were no verbal or written agreements with any other entities to use its assigned frequencies.¹⁴ Moreover, assuming *arguendo* that The Plaza Resort & Spa authorized other entities to use its frequencies in the past, there is no evidence of any such agreement with American Taxi. Thus, we confirm our finding in the *NAL* and conclude that American Taxi was not authorized to transmit on the frequency 152.3900 MHz.

6. American Taxi's owner also alleges he never received any verbal or written warnings from the Tampa Office agents on September 28, 2009, and therefore its violations were not willful or repeated. We disagree. During the September 28, 2009 inspection of American Taxi's business premises, the agents from the Tampa Office asked to speak to the person in charge at American Taxi. The agents were informed that the owner was out of town and proceeded to speak with the female

⁵ 47 C.F.R. § 1.80.

⁶ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ 47 U.S.C. § 301.

⁹ *NAL Response* at 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ The Plaza Resort and Spa indicated to the Tampa Office agents that it did not have any verbal or written agreements with any other entities to use its frequencies on September 28, 2009 and again on November 18 and 19, 2010.

dispatcher, who was the only person employed by American Taxi visibly present. The agents provided the written warning to the dispatcher, and warned the owner about the violations via a phone number provided by the dispatcher. The voice that self-identified as American Taxi's owner on September 28, 2009 sounded the same as the voice that self-identified as the owner in all communications and recorded messages with the Tampa Office, ranging from September 28, 2009 to December 22, 2009.¹⁵ Moreover, the "Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors,"¹⁶ and when the actions or omissions of independent contractors or employees have resulted in violations, the Commission has "consistently refused to excuse licensees from forfeiture penalties."¹⁷ Therefore, we conclude that because American Taxi continued to operate on an unauthorized frequency after it received notice, both verbally and in writing that such activity violated the Act and the Rules, its actions were intentional.

7. Moreover, we do not find persuasive American Taxi's arguments that its violations were not willful or repeated. Section 312(f)(1) of the Act provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act..."¹⁸ Thus, American Taxi need not have known that its actions violated section 301 of the Act for its violation to have been willful. American Taxi need only have consciously and deliberately operated the radio transmitters. As American Taxi communicated with its taxi cab drivers on an unauthorized frequency via its radios on more than one day, its violations were willful and repeated.¹⁹ Thus, based on the evidence before us, we find that American Taxi willfully and repeatedly violated section 301 of the Act by operating radio transmitters on the frequency 152.3900 MHz without the requisite Commission authorization. Accordingly, pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*, we conclude that cancellation of the forfeiture is unwarranted and impose a forfeiture in the amount of \$20,000.

¹⁵ American Taxi's owner asserts that the agent spoke to another dispatcher on September 28, 2009, not him. See *NAL Response* at 1. However, the agents later spoke to this dispatcher and received voice messages from him. The voice that the agents believe to be this dispatcher did not sound like the voice that self-identified as American Taxi's owner.

¹⁶ *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 ¶ 7 (2002); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34 (1991) (holding that a company's reliance on an independent contractor to construct a tower in compliance of FCC rules does not excuse that company from a forfeiture); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972) (holding a licensee responsible for violations of FCC rules despite its reliance on a consulting engineer); *Petracom of Joplin, L.L.C.*, Forfeiture Order, 19 FCC Rcd 6248 (Enf. Bur. 2004) (holding a licensee liable for its employee's failure to conduct weekly EAS tests and to maintain the "issues/programs" list); and *Saga Communications of New England, Inc.*, Forfeiture Order, 19 FCC Rcd 19743 (Enf. Bur. 2004) (holding a licensee responsible for its employee's broadcast of a telephone conversation without first informing the other party of intention to do so).

¹⁷ *American Paging, Inc. of Virginia*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 10417, 10420 ¶ 11 (Enf. & Cons. Inf. Div., Wireless Tel. Bur. 1997) (quoting *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244 (1984)).

¹⁸ 47 U.S.C. § 312(f)(1). See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

¹⁹ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission's Rules, American Taxi Shuttle and Limo, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for violations of section 301 of the Act.²⁰

9. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act.²¹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. American Taxi shall also send electronic notification to SCR-Response@fcc.gov on the date said payment is made.

10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by both First Class and Certified Mail Return Receipt Requested to American Taxi Shuttle and Limo, Inc. at 105 Thomasson Ave., Daytona Beach, FL 32117.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

²⁰ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4).

²¹ 47 U.S.C. § 504(a).